

27

Filed Jun 1 - 1950

Order Granting Intervention.

This cause coming on to be heard upon the motion of Capital Transit Company for leave to intervene herein as a party respondent, and the Court having considered said motion and the pleading tendered therewith, and it appearing to the Court that Capital Transit Company should be permitted to intervene as prayed in said motion, and the Court being duly advised in the premises, it is, by the Court this 1st day of June, 1950,

ORDERED, that Capital Transit Company be and it is hereby granted leave to intervene in this cause, and it is hereby made a party to this cause, and to that end the intervenor's motion to dismiss annexed to the said motion to intervene is hereby considered and stands as a motion to dismiss by Capital Transit Company.

EDWARD A. TAMM
Judge

28

Filed Jun 2 - 1950

Order Granting Intervention.

This cause coming on to be heard at this term of court upon the motion of Washington Transit Radio, Inc., for leave to intervene herein as a party respondent, and the Court having considered said motion and the pleading tendered therewith, and it appearing to the Court that the said Washington Transit Radio, Inc., should be permitted to intervene herein as prayed in said motion, and the Court being duly advised in the premises, it is, by the Court, this 1st day of June, 1950,

Ordered, that Washington Transit Radio, Inc., be and it is hereby granted leave to intervene in this cause, and it is hereby made a party to this cause, and to that end may file a motion or pleading in this cause in the same manner

and with like effect as if named as an original party in this cause.

That this order is to be without prejudice to any proceeding heretofore had in this cause.

EDWARD A. TAMM
Judge

29

Filed Jun 15 1950

Order Dismissing Petition of Appeal

Upon consideration of the motion of the respondent Public Utilities Commission in the above-stated action to dismiss the petition of appeal, and after hearing oral argument of all the parties, it is by the Court this 15th day of June, 1950,

ORDERED that the motion of the Public Utilities Commission of the District of Columbia to dismiss the petition of appeal be, and it is hereby, granted and that the said petition of appeal be, and it is hereby, dismissed.

EDWARD A. TAMM
Judge

30

Filed Jun 15 1950

Order Dismissing Petition of Appeal

Upon consideration of the motion of the intervenor Capital Transit Company in the above-stated action to dismiss the petition of appeal, and after hearing oral argument of all the parties, it is by the Court this 15th day of June, 1950,

ORDERED that the motion of the Capital Transit Company of the District of Columbia to dismiss the petition of appeal be, and it is hereby, granted and that the said petition of appeal be, and it is hereby, dismissed.

EDWARD A. TAMM
Judge

31

Filed Jun 15 1950

Order Dismissing Petition of Appeal.

Upon consideration of the motion of the respondent, Washington Transit Radio, Inc. in the above-stated action to dismiss the petition of appeal and after hearing the oral argument of all the parties, it is by the Court this 15th day of June, 1950,

ORDERED that the motion of Washington Transit Radio, Inc. to dismiss the petition of appeal be and it is hereby granted and that the said petition of appeal be and it is hereby dismissed.

EDWARD A. TAMM

Judge

32

Filed Jul 14 1950

Notice of Appeal to the United States Court of Appeals for the District of Columbia Circuit.

Notice is given that Franklin S. Pollak and Guy Martin, the petitioners, appeal to the United States Court of Appeals for the District of Columbia Circuit from the orders of June 15, 1950, dismissing their petition of appeal.

PAUL M. SEGAL

HARRY P. WARNER

QUAYLE B. SMITH

*Attorneys for Franklin S.
Pollak and Guy Martin*

SEGAL, SMITH & HENNESSEY
816 Connecticut Avenue
Washington 6, D. C.

July 14, 1950

Filed Aug 1 1950

Amended Statement of Points.

The appellants state that the points on which they intend to rely on the appeal in this matter are as follows:

A. The Court erred in granting the several motions to dismiss on the ground "that there is no legal right of the petitioners which has been invaded, threatened or violated by the action of the Public Utilities Commission,".

40 B. The Court's error was in its failure to recognize and give effect to the certain rights, privileges, duties and liabilities which exist as a matter of law, and which entitled the petitioners to prevail on an appeal from the questioned order of the Public Utilities Commission.

C. The order in question authorized and approved the imposition by Capital Transit Company of a requirement that one must hear certain music, advertisements and announcements put out over loud speakers as a condition to riding on the streetcars and busses of Capital Transit Company.

D. The rights, privileges, duties and liabilities referred to are:

(1) The right of objecting riders, under the First Amendment to the United States Constitution, to listen or not to listen, and to read or not to read.

(2) The right of objecting riders, under the Fifth Amendment to the United States Constitution, not to be deprived of their liberty (privacy, and leisure and health), without due process of law and not to have their private property (time and health), taken for private use or without compensation.

(3) The duty of a common carrier to take extra care for the protection of riders known to be more susceptible to injury than the majority of passengers.

(4) The liability for the physical consequences of emotional distress intentionally and unreasonably caused.

41 (5) The liability of a common carrier to its customers for injury caused to them upon its "land" by any natural or artificial condition, known to the common carrier, which it is reasonably necessary for the public to encounter in order to secure its services.

(6) The rule that in such a case as this the "public" is injured if a significant minority is injured.

(7) The right of privacy.

(8) The Police Regulations of the District of Columbia, Article VI, Sections 1 and 2, which prohibit the use within the District of Columbia of any "mechanical device . . . or instrument for intensification of the human voice or of any sound or noise for advertising purposes." Under Paragraph 90 of Section 8 of the aforesaid Act the Commission has the duty of enforcing compliance with these regulations.

(9) The Commission's Orders No. 683 of September 29, 1927 and No. 711 of June 19, 1928, requiring that the noise incident to the operation of streetcars and busses shall be kept to a minimum and prohibiting any "material change in equipment" without prior approval by the Commission of the plans and specifications therefor. No such approval has been requested or given in this case.

(10) The prohibition, in the Act of March 4, 1913 (37 Stat. 977, Ch. 150. § 8, Par. 2), of any unjust, unreasonable or discriminatory service, act or practice and of a greater charge, or demand for a greater compensation, than is specified in a rate schedule on file.

(11) The provision of the Joint Resolution of January 14, 1933, that all of Capital Transit's powers shall be exercised subject to the supervision of and regulation by the Commission as provided by law.

(12) The provisions of the Capital Transit's corporate charter, which are such that its participation in the arrangements for these broadcasts is *ultra vires*

PAUL M. SEGAL

HARRY P. WARNER

QUAYLE B. SMITH

816 Connecticut Avenue

Washington 6, D. C.

Attorneys for the plaintiff

August 1, 1950

UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

No. 10777

FRANKLIN S. POLLAK and GUY MARTIN, *Appellants*

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA
and

JAMES H. FLANAGAN, GORDON R. YOUNG and KENNETH W.
SPENCER, constituting the Public Utilities Commission
of the District of Columbia, *Appellees*

Statement of Contents of Appendix.

To: Vernon E. West and Lloyd B. Harrison, Esqs.
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Attorneys for Washington Transit Radio, Inc.

The parts of the record which the appellants propose to print in the appendix to their brief pursuant to Rule 16 are:

1. Opinion of the Court below (pp. 3 and 4).
2. Petition of appeal filed April 13, 1950, by Franklin S. Pollak and Guy Martin from Order No. 3612 of the Public Utilities Commission of the District of Columbia, dated December 19, 1949 (pp. 5 to 20, inclusive).
3. Motion to dismiss filed by Capital Transit Company May 2, 1950 (p. 22).
4. Motion to dismiss filed by Washington Transit Radio, Inc., May 2, 1950 (p. 23).
5. Motion to dismiss filed by the appellees May 3, 1950 (p. 24).
6. Order of the Court below granting the motion of John O'Dea, People's Counsel, to intervene, filed May 10, 1950 (p. 26).
7. Order granting intervention by Capital Transit Company, filed June 1, 1950 (p. 27).
8. Order granting intervention by Washington Transit Radio, Inc., filed June 2, 1950 (p. 28).
9. Order dismissing petition of appeal on motion of the appellees, filed June 15, 1950 (p. 29).

10. Order dismissing petition of appeal on motion of Capital Transit Company, filed June 15, 1950 (p. 30).
11. Order dismissing petition of appeal on motion of Washington Transit Radio, Inc., filed June 15, 1950 (p. 31).
12. Notice of appeal to this Court, filed July 14, 1950 (p. 32).
13. Amended statement of the points on which the appellants intend to rely, filed August 1, 1950 (pp. 39 to 42, inclusive).
14. This notice.

PAUL M. SEGAL
HARRY P. WARNER
QUAYLE B. SMITH

816 Connecticut Avenue
Washington 6, D. C.
*Attorneys for the
appellants*

September 19, 1950

Proof of Service.

DISTRICT OF COLUMBIA: ss

Today I mailed a copy of the foregoing to:

Vernon E. West and Lloyd B. Harrison, Esqs.
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Attorneys for Washington Transit Radio, Inc.

HARRY P. WARNER

Signed and sworn to before me September 18, 1950.
My commission will expire November 15, 1952.

EDITH Z. MILLER
Notary Public

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA.

Order No. 3560.

July 14, 1949.

In the Matter of Radio Reception in Busses and Street Cars
of CAPITAL TRANSIT COMPANY.

P. U. C. No. 3490/1, Formal Case No. 390.

C. A. 1655-50, C. A. 1694-50, C. A. 1716-50.

Order of Investigation.

Capital Transit Company has embarked upon a program of installing radio receivers in a certain number of its street cars and busses. It is anticipated that by August 15, 1949, approximately two hundred (200) of such installations will have been completed.

The Commission has received a number of communications protesting the use of radios on the vehicles of the Company. Therefore,

IT IS ORDERED:

That an investigation be made to determine whether or not the installation and use of radio receivers on the street cars and busses of Capital Transit Company is consistent with public convenience, comfort and safety; and that a formal public hearing be held upon the subject of the investigation at a time to be fixed by notice of hearing.

A True Copy:

By the Commission:

E. J. MILLIGAN,
Executive Secretary.

(SEAL)

N. H. HETZEL,

Chief Clerk.

ebm

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA.
WASHINGTON 4, D. C.

September 19, 1949.

In the Matter of Radio Reception in Busses and Street Cars
of CAPITAL TRANSIT COMPANY.

P. U. C. No. 3490/1, Formal Case No. 390.

C. A. 1655-50, C. A. 1694-50, C. A. 1716-50.

Notice of Hearing.

By its Order No. 3560; dated July 14, 1949, this Commission ordered that an investigation be made to determine whether or not the installation and use of radio receivers on the street cars and busses of Capital Transit Company is consistent with public convenience, comfort and safety. The Commission also ordered that a formal public hearing be held upon the subject of the investigation at a time to be fixed by notice of hearing.

Pursuant to Order No. 3560, notice is hereby given that a formal public hearing will be held upon the above-captioned matter on October 27, 1949, at 10:00 a.m.; in Room 500 of the District Building.

By direction of the Commission.

E. J. MILLIGAN,
Executive Secretary.

jb

Excerpts from Testimony and Proceedings.

5 **Lorane T. Johnson** was called as a witness and having been first duly sworn was examined and testified as follows:

Direct Examination

Captain Johnson: I merely have the statistical data involving accidents on streetcars and busses and we will state the position of the Police Department in this matter.

Chairman Flanagan: Go right ahead.

Captain Johnson: Since the 1st of July, to date, there have been 180 street cars involved in traffic accidents of which 26 were equipped with radios. Over the same period of time there were 125 busses involved, six of which were equipped with radios. The total number of accidents during that same period of time was 4,007. Since the 1st of January there have been 57 traffic fatalities, ten of which have been caused or involved streetcars and seven of which involved busses. Only one of those 17 was radio-equipped at that time.

The Department is neutral insofar as the equipment of vehicles with radios is concerned.

Chairman Flanagan: Do those statistics have any particular significance to you, Captain?

Captain Johnson: Yes, sir, they indicate to me that the radio-equipped vehicles do not enter into the traffic accident picture at all.

7 William H. Voltz was called as a witness and having been first duly sworn was examined and testified as follows:

Direct Examination

Mr. Voltz: My name is William H. Voltz, V-o-l-t-z, Planning Engineer of the Department of Vehicles and Traffic, for the District Government. I represent the Director of the Department of Vehicles and Traffic in this matter and I have a statement here which I would like to read at this time.

In the absence of any evidence that radios in motor vehicles have been a contributing factor in traffic accidents, the Director of Vehicles and Traffic has not deemed it necessary or advisable to recommend to the Commissioners adoption of an amendment to the Traffic and Motor Vehicle Regulations prohibiting the use of radios in motor vehicles. In other words, we do not now consider it to be a traffic matter,

The Department of Vehicles and Traffic's test stations have made a check of the number of motor vehicles equipped with radios. We have found that approximately 47 per cent are so equipped.

Since by law, the Transit Company is required to report to the Public Utilities Commission all accidents involving busses or streetcars, regardless of the nature of seriousness, and since they can readily supply information as to those are radio equipped, it would seem that engineers of the Commission could easily secure data indicating whether or not such devices are hazardous.

F. A. Sager was called as a witness and having been first duly sworn was examined and testified as follows:

Direct Examination

By Mr. Harrison:

Q. Mr. Sager, will you state your name and position? A. F. A. Sager, Chief Engineer of the Public Utilities Commission.

Q. Has your department made any survey or study to determine whether or not the use of radios on streetcars and busses has resulted in unsafe operation or has resulted in inconvenience to the public? A. Certain simple observations have been made which I will be glad to enumerate.

Q. If you will, please. A. The Engineering Bureau men, including myself, have made trips on radio-equipped busses and streetcars. I will enumerate some of these trips in detail.

One trip that I made sitting on the front seat on the right-hand side of the car, next to the entrance door, was made with the radio on and operating and the volume of the radio tone was such that all of the announcements and music would not be definitely heard at that point.

The volume was so low that no interference was experienced by me or by the driver of the car so far as any requests from those near him were concerned or those outside.

The witness: Now a second trip was made sitting in the seat just in front of the exit door. From that position the radio was also tuned down to approximately the same volume as the one that I just referred to but was perfectly distinct, all the announcements and music could be heard with the exception of certain times when the bus was speeding up and the motor made an undue amount of noise.

In both of those cases it would appear that there was no lack of safety, the operation of the bus could be as safely carried out with as without because at the time of the second observation, conversations were going on, were taking place, between two people in the seat opposite me and those were of about the same volume as the radio at that time.

My conclusion, and this is concurred in by other members of the Engineering Bureau who have made similar trips is that when the radio is operated at the proper volume, at a reasonable volume, enough so that it may be plainly heard by those in the rear of the car, the fact is that it will not be plainly heard in all cases by those sitting in the very front seats of the car but in those cases it is our opinion that there is no question of lack of safety due to the operation of the radio.

The matter of public convenience or public comfort is, I assume, to be developed by testimony of others in this hearing. As for the matter of privacy which has been brought up by some, I wish to make the observation that I do not consider any mass transportation vehicle a vehicle in which privacy can be maintained, or in which privacy exists. You used to have that in mass transportation that is private; that is, the taxicabs, but with the group riding you no longer have privacy and therefore I do not know that the question of privacy enters into the consideration of this question.

In conclusion I must say that personally I don't care for the radio on streetcars but from the standpoint of safety

I can see no objection to it. If there is a slight nuisance value as an advertising medium, there is no more than we bear in cases of other activities or methods that the advertising people have.

By Mr. Harrison:

Q. Mr. Sager, was the sound too loud so that the driver could not observe the stop bell in the vehicle?

12 A. In none of the trips that I have taken, excepting some taken early in the season, at least the middle of the season, August and September, I believe, then the radio was too loud.

Q. Would you say that it was too loud for the driver to observe and hear traffic signals? A. Not in the recent trips, no.

Mr. Harrison: That is all.

Chairman Flanagan: Any other questions?

Cross-Examination

By Mr. Shoenfeld:

Q. Would you say that it would interfere with the hearing of the announcement of street stops? A. No. Whether or not you can hear the operator depends entirely upon the operator. Some operator speaks in a way that you can plainly hear just the same as some people here speak plainly and some do not. That is a function of the individual operation. But with the normal tone of voice, the radio has operated on the trips that I have taken recently, it would produce no interference.

Q. Can one equally well hear the announcement of the street stop when there is no interference by the radio advertisements and when there is such an interference? A. Depending on whether there is other interference due to conversations in the car or noises such as street noise,
13 or traffic noise. All of those things may do so.

Mr. Shoenfeld: All of those things may do so.